

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0346P

Withholding Tax

For the month of December 2005

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of a monthly withholding tax return for the month of December 2005. The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as (1) the penalties in the companion months were abated, and (2) the error is the result of an illness of a key employee.

With regard to the abatement concerning the companion months of November 2005 and January 2006, the abatements were done in error. According to Department procedures, erroneous abatements do not serve as precedents for other abatement decisions. Therefore, this issue is not a factor in the abatement of penalty in the instant case.

With regard to the illness, the State of Indiana website has numerous Letters of Finding that state illness to a key employee is negligence. To be more specific, a taxpayer is responsible for the duties of an employee. If an employee is unable to perform said tax duties, then the taxpayer is responsible for the performance of said tax duties, even if the employee is ill. In the instant case, a key employee was ill and taxpayer failed to perform

tax duties. Therefore, Department policy states the taxpayer is negligent and the taxpayer fails to establish reasonable cause on this point.

With regard to compliance, the taxpayer has a bad compliance history. The taxpayer had an abatement in 2003 for \$2,930.07, and, the taxpayer has had eight prior penalty liabilities (that were subsequently paid by the taxpayer). The compliance record is a negative factor in the consideration of abatement of penalty.

The regulation which references negligence is 45 IAC 15-11-2(b) which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the taxpayer's penalty protest is denied.

FINDING

The taxpayer's penalty protest is denied.